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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/380,484 12/06/99 NEVILLE D 14028.0287

GWENDOLYN D SPRATT  
NEEDLE & ROSENBERG  
SUITE 1200 THE CANDLER BUILDING  
127 PEACHTREE STREET N E  
ATLANTA GA 30303-1811

HM12/0522

EXAMINER

EWOLDT, G

ART UNIT

PAPER NUMBER

1644

DATE MAILED:

05/22/01

17

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.  
**09/380,484**

Applicant(s)  
**Neville et al.**

Examiner  
**G. R. Ewoldt**

Art Unit  
**1644**



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 3/16/01 and 4/6/01.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 26, 27, and 30-43 is/are pending in the application.
- 4a) Of the above, claim(s) 27 and 30-42 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 26 and 43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☒ All b) ☐ Some\* c) ☐ None of:
- ☒ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 8, 14,
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

### DETAILED ACTION

1. Applicant's election with traverse of Group II, claims 19 and 21-26, in Paper No. 13, filed 73/16/01, is acknowledged. Applicant argues that the Examiner has failed to establish a search burden as required by M.P.E.P. § 803.

This argument are not found persuasive for the following reason. As the application was filed under 35 U.S.C. 371, the restriction requirement was made under M.P.E.P. § 1850, under which the establishment of a search burden is not required. See M.P.E.P. § 1850.

The requirement is still deemed proper and is therefore made FINAL.

2. Claim 27 and 30-42 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to non-elected inventions.

Claims 26 and 43 read on the elected invention and are being acted upon.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 26 and 43 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by WO96/32137 (1996, IDS).

WO96/32137 teaches an anti-T cell immunotoxin comprising an scUCHT1-DT390 (anti-CD3 antibody linked to truncated diphtheria toxin) immunotoxin. Said immunotoxin further comprises  $\mu$ CH2,  $\mu$ CH3, VL, VH,  $\gamma$ IgG hinge H, and (G<sub>4</sub>S)<sub>3</sub> L regions (see particularly Figure 11 and Example 10, page 69).

The reference clearly anticipates the claimed invention.

5. Claims 26 and 43 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Thompson et al. (1995, IDS).

Thompson et al. teaches an anti-T cell immunotoxin comprising an scUCHT1-DT390 (anti-CD3 antibody linked to truncated diphtheria toxin) immunotoxin. Said immunotoxin further comprises  $\mu$ CH2,  $\mu$ CH3, VL, VH,  $\gamma$ IgG hinge H, and  $(G_4S)_3$  L regions (see particularly *Immunotoxins*, page 28037, column 2).

The reference clearly anticipates the claimed invention.

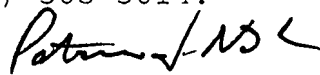
6. No claim is allowed.

7. References 25 (Coffin), and 75 and 76 (Oluwole et al.), on PTO Form 1449, filed 01/18/00, have been lined through and have not been considered because copies of said references have not been provided.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dr. Gerald Ewoldt whose telephone number is (703) 308-9805. The examiner can normally be reached Monday through Thursday and alternate Fridays from 7:30 am to 5:30 pm. A message may be left on the examiner's voice mail service. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan can be reached on (703) 308-3973. Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center 1600 receptionist whose telephone number is (703) 308-0196.

Papers related to this application may be submitted to Technology Center 1600 by facsimile transmission. Papers should be faxed to Technology Center 1600 at (703) 305-3014.

G.R. Ewoldt, Ph.D.  
Patent Examiner  
Technology Center 1600  
May 19, 2001

  
Patrick J. Nolan, Ph.D.  
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Technology Center 1600